

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 02-409 (1) (RHK/AJB)

Plaintiff,

ORDER

v.

Ronald Williams,

Defendant.

Before the Court is the Defendant's Section 2255 Motion to Vacate his sentence. In May 2003, Defendant entered a guilty plea to Count 1 of the Indictment charging him with conspiracy to distribute crack cocaine and to Count 4 charging him with distribution of crack cocaine. He was sentenced to a term of 262 months on each of the two counts, to be served concurrently. Based upon United States v. Booker, 543 U.S. 220 (2005), Defendant was subsequently resentenced to 204 months on each count to be served concurrently.

Following the congressional amendment to the crack cocaine guidelines, Defendant's new guidelines range was 210 to 262 months rather than 262 to 327 months; he received a 148-month sentence which was affirmed by the Eighth Circuit. This Section 2255 Motion followed.

He now asserts that crack cocaine and powder cocaine are identical substances and the higher penalties for crack cocaine have a disparate impact on race. He did not raise this issue in any of his direct appeals, nor does he assert in the instant Motion that

he is actually innocent. Accordingly, the claim has been waived and his Motion will be denied.

With respect to his argument that “the indictment was in contrast with the chemical analysis reports,” that claim was effectively waived by the terms of the plea agreement in which Defendant admitted that he sold crack cocaine.

With respect to his final claim of ineffective assistance of counsel, Defendant has previously made an almost identical motion which was denied (Doc. No. 96, at 5-6.); he has not demonstrated any prejudice by the Court’s denial of this Motion.

Based on the foregoing, and upon all the files, records and proceedings herein, **IT IS ORDERED:**

1. Defendant’s Section 2255 Motion (Doc. No. 169) is **DENIED**;
2. Defendant’s Motion to Appoint Counsel (Doc. No. 171) is **DENIED**; and
3. The Court **DECLINES** to issue a Certificate of Appealability.

Dated: October 14, 2011

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge